

RAVALLI COUNTY STREAMSIDE PROTECTION SETBACK INTERIM ZONING

SECTION 1. TITLE

These regulations shall be known and shall be cited as the Ravalli County Interim Streamside Zoning Regulation Concerning Construction and Other Activities Near Streams and Rivers

SECTION 2. AUTHORITY

These regulations are adapted pursuant to Sections 76-2-201 through 76-2-228, MCA, and are adopted as Interim Zoning Regulations pursuant to Section 76-2-206 MCA, in response to the emergency existing in Ravalli County as defined below.

SECTION 3. PURPOSE

The purpose of this Interim Streamside Setback Zoning Regulation is to manage the construction of permanent structures and certain other activities adjacent to streams and rivers in Ravalli County.

SECTION 4. INTENT

The intent of this Interim Setback Zoning Regulation is to prevent permanent, dire, irreversible consequences to public health and safety, water quality, stream stability, flood flow heights, views, and fish and wildlife habitat resulting from construction and certain other activities adjacent to streams and rivers in Ravalli County while Ravalli County completes development of a permanent Streamside Setback Zoning Regulation.

SECTION 5. JURISDICTION

These regulations shall apply to all unincorporated areas in Ravalli County Montana. These regulations do not apply to Federal and State lands located within the County.

SECTION 6. DEFINITIONS

Agricultural Uses: Grazing and cropping to produce food, feed and fiber commodities, including the use of all equipment normally used for such purposes, including motorized equipment. "Agricultural uses" does not include permanent residential structures, barns, sheds, corals or other permanent structures. Fencing to control livestock is considered an agricultural use.

Existing Structure

Any permanent structure, or any part thereof, in existence on the effective date of this regulation.

Impervious Surfaces: Any paved, hardened or structural surface, which does not allow for infiltration of precipitation at a rate equal to the infiltration rate of surrounding, undisturbed areas.

Intermittent stream: A stream or reach of a natural stream that normally flows for only part of the year in a well defined, natural channel.

Irreversible Damage

Damage resulting from construction, excavation, removal of vegetation and other activities within the setback that cannot be reasonably mitigated because of technical or financial considerations and is therefore considered permanent.

Natural Pond:

Any naturally occurring water body within the riparian area not defined as a wetland. Water bodies created by excavation or by construction of dams or other water retention structures are not considered natural ponds.

100 Year Flood: A flood magnitude which has a one (1) percent chance of being equaled or exceeded in any given year, commonly referred to as a base flood

100 Year Floodplain: The area of land that would be inundated by water of a 100-year flood. The 100-year floodplain consists of a floodway and a flood fringe.

Ordinary High Water Mark:

The line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value.

Perennial Stream: A stream or reach of a natural stream that, under normal precipitation conditions, flows throughout the year. Streams dewatered during part of the year by irrigation or other withdrawals, but which would flow through the year without said withdrawals, are perennial streams.

Permanent Structure: Construction of any kind, including those of earth or rock, including but not limited to residential structures, barns, pavement, garages, outbuildings and other structures considered to have a useful life of 10 years or longer as defined by the Federal Tax Code depreciation schedule.

Process of Construction:

A residential structure is determined to be in the process of construction if there is either an existing foundation, wastewater treatment system and well in the ground on the effective date of this Regulation, or a valid permit has been secured that specifies the location of the foundation, wastewater treatment system and well on the effective date of this Regulation.

Residential Structure

Any structure completed or in the process of construction, intended for human occupancy. Mobile homes and modular homes are considered residential structures. Motor homes, tent, cabins, campers and similar structures shall be considered residential structures if occupied for more than a total of 30 days during each calendar year this Regulation is in effect.

Riparian Area

Area adjacent to water containing and defined by plant communities contiguous to and affected by surface and subsurface hydrologic conditions associated with perennial or intermittent lotic and lentic water bodies and as further defined by the U.S. Fish and Wildlife Service publication "A System for Mapping Riparian Areas in the Western United States, 1998)

Setback: An area adjacent to a stream where certain uses and activities are prohibited or controlled. Setback distance shall be measured from the ordinary high water mark on each stream bank and shall extend an equal distance on each side of said stream.

Buffers Zones: Buffer zones are not additional setback distances, but rather the portion of the setback that is designated to remain relatively undisturbed. For the purposes of this interim setback regulation, buffer zones and/or setbacks can be used interchangeably. Subsequent regulations may include both buffer zones and setbacks.

Variance

Use or activity approved by the Ravalli County Board of Adjustments that specifically permits deviation from the streamside setback requirements and restrictions included in this Regulation.

Wetland

Those areas that are inundated or saturated by surface or ground water at a frequency and sufficient duration to support a prevalence of vegetation typically adapted for growth and survival in saturated soils and as additionally defined by the U.S Army Corps of Engineers Wetland Delineation Manual (U.S Army Corps of Engineers Environmental Laboratory, 1987).

SECTION 7. SETBACK REQUIREMENTS

Class 1 Stream: Shall be the main stem of the Bitterroot River extending Northward from the confluence of the West Fork and the East Fork of the Bitterroot to the Ravalli County line and all wetlands and natural ponds that occur within the associated riparian area. Setback shall correspond to the regulatory 100-year floodplain as defined by FEMA but shall be, as a minimum, 200 feet on either side of the outermost stream channel, wetland or natural pond as measured from the ordinary high water mark.

Class 2 Stream: Shall be the entire reach of the East Fork and of the West Fork of the Bitterroot River extending from their confluence upstream to the headwaters and all wetlands and natural ponds that occur within the associated riparian area. Setback shall extend 150 feet on both sides of the stream, wetland or natural pond as measured from the ordinary high water mark.

Class 3 Stream: Shall consist of all streams in Ravalli County, except those streams included in Class 1 and Class 2, draining an area equal to or greater than 25 square miles and all wetlands and natural ponds occurring within the associated riparian area. Setback shall be 100 feet on each side of the stream, wetland or natural pond as measured from the ordinary high water mark. Class 3 Streams shall consist of the following streams as identified on United States Geologic Survey topographic maps:

Tributaries of the West Fork of the Bitterroot River:

- Hughes Creek
- Overwhich Creek
- Blue Joint Creek
- Piquett Creek
- Nez Perce Creek
- Boulder Creek
- Trapper Creek

Tributaries of the East Fork of the Bitterroot River:

- Moose Creek
- Meadow Creek
- Cameron Creek
- Tolan Creek
- Camp Creek
- Warm Springs Creek

Tributaries of the main reach of the Bitterroot River:

- Chaffin Creek
- Tin Cup Creek
- Rock Creek
- Rye Creek
- Burke-Harlan Creek
- Sleeping Child Creek
- Skalkaho Creek
- Gird Creek
- Lost Horse Creek
- Roaring Lion Creek
- Sawtooth Creek
- Blodgett Creek

Mill Creek
 Fred Burr Creek
 Bear Creek
 Sweathouse Creek
 Big Creek
 Willow Creek
 Willoughby-Spooner Creek
 Burnt Fork Creek
 Kootenai Creek
 Ambrose-Three Mile Creek
 Bass Creek
 Sweeny Creek
 Eight Mile Creek

Class 4 Stream: Shall consist of all perennial streams, except those listed above as Class 1, 2 and 3 streams, located in Ravalli County having a drainage area of less than 25 square miles and all wetlands and natural ponds occurring within the associated riparian areas. Setback shall be 75 feet on each side of the stream, wetland or natural pond as measured from the ordinary high water mark.

Class 5 Stream

All intermittent streams not included in Class 1 through Class 4 above and all wetlands and natural ponds occurring within the associated riparian area. Setback shall be 50 feet on each side of the stream, wetland or natural pond as measured from the ordinary high water mark.

SECTION 8. PERMITTED USES AND ACTIVITIES

The following structures, uses and activities are permitted within the setback area as defined in Section 7. No use or activity permitted under these Regulations shall be interpreted as allowing trespass on private property.

Subdivisions:

All subdivisions for which designated setbacks, no build/alteration zones or building envelopes were approved by the Ravalli County Board of County Commissioners prior to the effective date of this Regulation. Subdivisions approved without designated setbacks, no build/alteration zones or building envelopes shall be subject to all conditions contained in this Regulation.

Nonconforming Existing Structures

All existing structures, including residential structures and associated amenities, such as lawns, gardens, outbuildings and picnic areas. This shall include all structures normally associated with commercial production of agricultural products, such as barns, corrals and fencing, and structures required for all other commercial enterprise existing on the effective date of this regulation. Roads, trails, bridges, headgates, culverts, utilities and other structures existing on the effective date of this Regulation are considered nonconforming existing structures.

Expansion and Replacement of Nonconforming Existing Structures

Reconstruction, repair or expansion of residential structures and other structures existing on the effective date of these Regulations so long as the footprint of the new construction is no more than 50 % larger, up to a maximum of 1000 square feet larger, than the footprint of the structure on the effective date of this Regulation. Expansion of nonconforming existing structures shall be allowed one time during the period this Regulation is in effect unless a Variance is granted by the Ravalli County Board of Adjustments.

Existing Structure Maintenance and Repair

Normal maintenance and required repair to an existing structure and associated landscaping, including but not limited to lawn cutting using mowing equipment, bridges and associate components; roadways but only

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to bring them up to “as new” standards; and culverts; irrigation ditches and associated controls, at the time of enactment of this regulation except as otherwise stated herein.

Agricultural Uses

All agricultural uses and activities on lands assessed as agricultural lands for tax purposes.

Pastures and Corrals

Pastures, corrals and other uses normally associated with maintenance of livestock located within the setback on lands not assessed as agricultural lands for tax purposes existing on the effective date of this Regulation.

Weed Control

Activities to control noxious weeds in accordance with guidelines of the Ravalli County Weed Management District. Herbicide may be used for control of noxious weeds so long as said herbicide is applied in strict accordance with the Product Label and the Management District's Rules.

Recreational Activities

Passive recreational activities such as fishing hunting, hiking, picnicking, and similar uses so long as said uses and activities do not include the use of motorized vehicles or results in irreversible damage within the setback.

Fire Protection

Removal of vegetation reasonably required to protect personal property from the threat of wildfire.

Streamside Construction and Maintenance:

All activities done under a valid 310 permit issued by the Bitterroot Conservation District.

Access to Irrigation and Other Waters

Access to the setback for the purpose of diverting water for irrigation and other purposes, such as for recreational or wildlife use, when the diversion is under a valid Water Right issued by the State of Montana and in accordance with all conditions contained therein. This shall include reasonable access and construction within the setback when said access and construction does not result in permanent and irreversible damage within the setback and is carried out in accordance with a 310 permit or other applicable permits.

Irrigation and Other Water Uses:

Irrigation of pasture or cropland located within the setback or use of water for recreational, wildlife or other purposes authorized under a valid Water Right.

SECTION 9. PROHIBITED USES AND ACTIVITIES

All uses and activities not listed in Section 8 are prohibited unless a variance is obtained from the Interim Streamside Setback Zoning Board of Adjustment. Prohibited uses and activities shall include, but are not limited to:

New Structures

Construction of permanent structures including residential structures, commercial and industrial structures and outbuildings, roads, bridges, water diversion structures, utilities and all other construction not specifically authorized under a valid 310 permit.

Wastewater Treatment Systems

New septic tanks, drain fields, septic lines or other structures design to treat or discharge sewage or other waste products unless performed under a valid Permit issued by Ravalli County prior to the effective date of this Regulation.

Impervious structures

Construction of impervious structures such as parking lots, roads and equipment or materials storage areas.

Removal of Vegetation

Vegetation within the setback shall not be disturbed or removed except as reasonably required by permitted uses and activities as set forth in Section 8.

Motorized Vehicle Use

All motorized uses within the setback is prohibited except as reasonably required by permitted uses and activities as set forth in Section 8.

Artificial Stream Bank Protection

All construction and activities intended to prevent normal stream migration and bank erosion, except the use of natural vegetation, unless done under a valid 310 permit. Artificial protection includes placement of rock (rip rap), gabions, cement slabs and similar materials and all other methods used to confine or limit the natural migration of streams.

SECTION 10. OTHER APPLICABLE REGULATIONS

Where this Regulation imposes a greater restriction upon uses and activities within setbacks than is imposed by other Federal, State or other Ravalli County Regulations including the Ravalli County Growth Policy, these Regulations shall apply. In cases where Federal, State or other County Regulations are more restrictive, the more restrictive Regulation shall apply.

SECTION 11. VARIANCES

Property owners or their designated representative may seek variances from the requirements of this Regulation by written application to the Ravalli County Board of Adjustments. The Board may approve a variance only if positive or non applicable findings are made on each of the following criteria, based on substantial credible evidence.

- There exists no reasonable alternative location on the owners property for the prohibited use or activity outside of the setback, and
- The variance will not adversely affect upstream or downstream hydraulic conditions, and
- The variance will not adversely affect private property located upstream or downstream from the proposed construction or activity, and
- Construction of residential structures and other improvements that cannot be reasonably accommodated without access to and/or crossing the setback. However, in no case shall construction or disturbance associated with construction within the setback be less than 50 feet as measured from the ordinary high water mark, and
- Granting of the variance does not violate existing Federal, State or County Regulations, and
- Enforcement of these Regulations would result in unreasonable hardship to the Owner as determined by the Ravalli County Board of Adjustments based on all information submitted to the Board by the property owner or their representative and
- Granting of the Variance does not permanently and adversely affect the health, safety and/or welfare of the residents of Ravalli County.

SECTION 12. INTERIM STREAMSIDE SETBACK ZONING BOARD OF ADJUSTMENTS

The Ravalli County Board of County Commissioners shall provide for a Board of Adjustments which will be responsible for review of Applications for Variance submitted in accordance with Section 11 of this Regulation.

SECTION 13. ENFORCEMENT

This Regulation shall be enforced by the Ravalli County Planning Department??

SECTION 14. VIOLATIONS AND PENALTIES

Penalties for Prohibited Uses and Activities carried out within the streamside setback zone without compliance with the provisions of Section 11, VARIANCES, shall be:

- Removal of structures at the expense of the owner
- Repair of damage caused by construction and other activities defined in SECTION 9 at owner's expense
- Any construction of residences and other permanent structures, including but not limited to, excavation or site preparation for construction of said structures, within the setback zone without a valid drain field permit, where applicable, will be subject to fines of up to \$1000.00 per day of violation.
- A Misdemeanor Offense punishable by up to 6 months in the Ravalli County Jail and/or a fine of up to \$500. Each day that the Prohibited Uses and Activities occur constitutes a separate violation.
- Other penalties that are presently applicable or that may be defined and approved by authority of Federal, State or County Government during the term this Regulation is in effect.